

PER SE BLOOD ALCOHOL CONTENT FOR OWI

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Senate Bills 616 and 617 as passed by the Senate
Sponsor: Sen. Roger Victory
House Committee: [Pending]
Senate Committee: Judiciary and Public Safety [Discharged]
Complete to 9-11-21

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

Taken together, Senate Bills 616 and 617 would amend the Michigan Vehicle Code and the Code of Criminal Procedure to accelerate the effectiveness of changes made to those acts by House Bills 4308 and 4309, which have been enacted as 2021 PAs 80 and 81 but do not take effect until November 21, 2021.

Under the Michigan Vehicle Code, a driver with a blood alcohol content of 0.08% is considered to be guilty of operating a vehicle while intoxicated even if he or she did not demonstrate signs of impairment. This presumptive alcohol level is called the *per se* level for operating while intoxicated (OWI).

As the law is now written, this *per se* level will be increased automatically to 0.10% on October 1, 2021. However, federal law requires states to adopt a *per se* level of 0.08% to be eligible for certain federal funds for highway programs. House Bills 4308 and 4309, enacted as 2021 PAs 80 and 81, will remove the provisions that increase the *per se* level to 0.10% on October 1, 2021, and will provide for the *per se* level to remain at 0.08% unless certain conditions are met.

However, House Bills 4308 and 4309 also contain language providing that they do not take effect until 90 days after they are enacted. They were both signed into law on August 23 and so will not take effect until November 21. As a consequence, the *per se* level for operating while intoxicated will still automatically change to 0.10% on October 1, 2021, and will remain at that level until House Bills 4308 and 4309 take effect on November 21.

Senate Bills 616 and 617 would amend the same sections of law as House Bills 4308 and 4309, and they would amend and enact the versions of those sections that were enacted by House Bills 4308 and 4309. That is, the Senate bills include all of the changes that were made by House Bills 4308 and 4309. Although those changes have not taken effect, they were enacted, so they are not shown in the Senate bills as bold insertions and stricken deletions. The additional changes the Senate bills would make (which do appear as insertions and deletions) are stylistic only and would have no substantive effect. Notably, if Senate Bills 616 and 617 were given immediate effect and enacted into law before October 1, 2021, they would prevent the *per se* limit for operating while intoxicated from being increased to 0.10% on that date.

The bills are tie-barred so that neither can take effect unless both are enacted.

SB 616 (Code of Criminal Procedure): MCL 777.33 and 777.48
SB 617 (Michigan Vehicle Code): MCL 257. 625 et seq.

FISCAL IMPACT:

As described above, Senate Bills 616 and 617 would together put into effect the amendments to the Michigan Vehicle Code and Code of Criminal Procedure that were made by House Bills 4308 and 4309, but they would do so without a 90-day wait. An analysis of House Bills 4308 and 4309 as they were enacted into law is now in progress. For a discussion of the fiscal implications of House Bills 4308 and 4309, see the House Fiscal Agency analysis of those bills as they were reported from House committee (and went on to be passed by the House).¹ The difference between the House-passed and enacted versions of the bills is that the bills as enacted will increase the *per se* blood alcohol level to 0.10% if certain conditions are met.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

¹ <https://www.legislature.mi.gov/documents/2021-2022/billanalysis/House/pdf/2021-HLA-4308-1B3CBD2C.pdf>